

14036

No. _____

Supreme Court of Illinois

People

vs.

Job, et al

The People for use
of Woods et. al.
vs.
J B Job et. al.

Opinion by
Walter J. The only error assigned
upon this record is the decision of
the court below in sustaining
the defendants demurrer to plain-
= tiffs declaration. It avers that plain-
= tiffs ~~were~~ ~~sued~~ ~~out~~ an attachment act
of the Madison Circuit Court, against
et H J Crap & Co. for ~~\$320~~ \$3,258, which
came to the hands of Job to execute
as Sheriff of that County; that in
pursuance to the command of the
writ he levied it, upon all the right title
and interest of Franklin Field and of
the defendants, in certain personal prop-
= erty described in ~~the~~ ^{his} return to the writ
in which he stated that the property was
in Field's possession, and also his in-
= terest in certain real estate. That the
plaintiff below at the May term
1859 obtained judgment in the attach-
= ment writ for \$3,294.14 damages and
\$21.55 costs of writ. That upon this

judgment was issued a special execution directed to defendant for requiring him to sell the property levied under the attachment, in satisfaction of the judgment. He afterwards returned the execution with the endorsement that he had sold the real estate levied upon, and paid the proceeds of the sale to the plaintiff's attorneys, but that he had been unable to find the personal property and had consequently not sold it, as commanded by the execution.

It is urged that the plaintiff must show that he has sustained damage by the wrongful act of the sheriff before he can recover, and that there should have been a special assessment of damages contained in the declaration. To have recited the declaration strictly formal such an assessment should have been made, but that on this matter of form no advantage could be taken of its omission as a general demurrer. To have recited that objection available the demurrer should have been special. The question then is whether the declaration contains such

assessments as shows a liability on the part of the defendants.

The doctrine is well settled, that a Sheriff in executing a fi fa, or other process requiring the levy of goods and chattels, has no right to seize the property of any person, but that of the defendant, the command of the writ and process and commands him to levy the property of the defendant. The writ confers the authority, and in its execution he must be held to act within the authority conferred. He who executes such a writ is bound at his peril to know that the property which he seizes, is that of the defendant. And should he levy upon that of a stranger he thereby becomes a trespasser, his writ affording him no protection or justification. He is not only unauthorized to levy upon property of any other person, but the law prohibits such an act. And when he levies the writ upon personal property the presumption is that the defendant has an interest in it, which is subject to sale on execution, and

the force of his endorsement of
the return will not change that
presumption. If the property does
not belong to the defendant he
should not levy upon it, and if
~~the title is in dispute, and there~~
~~is really a doubt as to its owner-~~
~~ship, he should suppose he has~~
~~incurred an indemnity from the~~
~~plaintiff. But in this case by his~~
return that he has seized these goods
and chattels, he is estopped to deny
that the defendant had such an
interest in them as was liable to
such an execution.

When the officer makes a levy he
is required to reduce the property
into his possession unless the defend-
=ant, shall execute a satisfactory
delivery bond. And if no such bond
is executed he is liable for the prop-
=erty, unless he can return that it
has been taken from his posses-
=sion under legal process, or that it
has been distrained by inevitable ac-
=cident, or public calamity. He is
held by the law to rigid accounta-
bility for its production to answer
the requirements of his writ, and

he is responsible for all acts of
negligence, or collusion by which
the property is not forthcoming to
satisfy the execution. In this case
there is no pretence that the property
has been taken from his possession
= or by any of the modes ^{by} which
the law excuses its production.
By the return ~~must therefore~~ he
admits the custody of the property
to have been in him, at the time
of the levy, as no levy is consider
= ed as being complete, until the
property is under the power and
control of the officer, and until
he has reduced it to ^{his control} ~~possession~~ there
is no levy. Having returned that he
has seized the writ upon the prop
= erty, he is concluded by it, from
afterwards ~~to contradict his~~
~~return by~~ showing that he did
not have ^{its} ~~the~~ custody, when he
indorsed his return. Thus having
by his return shown that he had seiz
= ed this property, on the writ of at
= tachment, and by his ^{to the filia} return, that
he ~~had~~ did not have the property
out of which to make the money
as commanded, he has ^{also} shown that

the plaintiff has sustained damage by his neglect of duty, and the demurrer admits the truth of the allegations, from which his liability is implied by the law, and the court below erred in sustaining the demurrer to the declaration, wherefore the judgment of the court below must be reversed and the cause remanded, with leave ~~for~~^{for} defendants to plead to the declaration.

Judgment Reversed

The People for use

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J B Job et al

Spencer
Washing.

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Recorded